



Before the North Dakota Ethics Commission

Requested by:
Representative Patrick Heinert

ADVISORY OPINION NO. 25-03

On April 29, 2025, the Ethics Commission (“Commission”) received an advisory opinion request from Representative Patrick Heinert. Based on its review of the request, the Commission decided to issue an advisory opinion pursuant to N.D.C.C. § 54-66-04.2. The question presented to the Commission for consideration is:

1. Would it be acceptable for a state legislator to attend the 2025 Specialty Equipment Market Association (“SEMA”) Show with complimentary lodging and credentials provided by SEMA?

I. FACTUAL BACKGROUND

According to its website, SEMA is an association that represents “over 7,000 member companies” and provides “product development resources, market research, networking, education, legislative advocacy, and more” to its members. It organizes the annual SEMA Show in Las Vegas. This year’s show will take place on November 4-7, 2025. It is a trade show to showcase automotive products, including new technology, tools, parts, and vehicles. According to its website, the show offers “99+ free education sessions – all of which are led by top industry professionals.” Members of the public may purchase a ticket only for November 7, 2025. Tickets for the public portion of the show start at \$120.

With his request for an advisory opinion, Representative Heinert forwarded the invitation he received from SEMA’s government affairs office. Representative Heinert has been offered complimentary credentials and lodging to attend, but he would need to pay for his own transportation to the event. According to the invitation, there will be “an exclusive opportunity for state legislators to engage directly with the businesses, innovators, and industry leaders shaping the future of American vehicles and transportation.” The event will include two special events for legislators, a “state lawmaker reception with industry leaders” and a “SEMA industry awards banquet.” According to Representative Heinert, his invitation is in connection with his service as a non-dues paying member of the SEMA National Legislative Board. He informed Commission staff previous SEMA events would include a meeting with SEMA’s executive board and another meeting where legislators are asked to provide input.

II. LEGAL BACKGROUND

A. Article XIV and the Ethics Commission's Rules

Section 2 of Article XIV of the North Dakota Constitution provides the baseline lobbyist gift prohibition. It states:

A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist.

...

“Gift,” as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, “gift” does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission.

N.D. Const. art. XIV, § 2(1).

As made clear by the language of Article XIV, items, services, and things of value are excluded from the definition of a gift when given in exchange for fair market consideration. Given in exchange for fair market consideration means the item, service, or thing of value must be given in exchange for something that is roughly equal in market value to the thing being exchanged. *See Fair Consideration, Black's Law Dictionary* (12th ed. 2024); *Kelsh v. Jaeger*, 2002 ND 53, ¶ 7, 641 N.W.2d 100 (“When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement. The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. We give words in a constitutional provision their plain, ordinary, and commonly understood meaning.”).

Section 54-66-03, N.D.C.C., codifies the gift provision of Article XIV and outlines civil penalties for violations of the section. In 2020, the Commission adopted rules related to gifts. N.D. Admin. Code ch. 115-02-01. These rules further define the terms “gift,” “lobby,” and “lobbyist.” Section 115-03-01-01(2), N.D. Admin. Code, defines “gift” to mean “any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel and recreation.” The term “lobby” means:

- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.

- b. Attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.
- c. Attempts to secure passage, amendment, or defeat of any administrative rule or regulation by any department, agency, or body of the state's executive branch.
- d. Attempts to otherwise influence public official action or decision.

N.D. Admin. Code § 115-03-01-01(4).

Additionally, a “lobbyist” is defined as a “person who engages in activity that falls within the definition of the term ‘lobby.’” N.D. Admin. Code § 115-03-01-01(5). However, it does not include:

- (1) A legislator;
- (2) A private citizen appearing on the citizen's own behalf;
- (3) An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and, whether or not compensated, who is acting in that person's official capacity;
- (4) [An individual] [i]nvited by the chairman of the legislative management, an interim committee of the legislative management, standing committee of the legislative assembly, or an official of any department, agency, or body of the state's executive branch to appear before the legislative management, interim committee, or standing committee for the purpose of providing information; or
- (5) An individual who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the individual is introduced to the committee by the registered lobbyist for the trade or professional organization or the business or industry.

Id.

The baseline rule is that lobbyists may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official in conjunction with any effort by the lobbyist to lobby the public official. N.D. Admin. Code § 115-03-01-02(1). Reciprocally, a public official may not knowingly accept a gift from a lobbyist offered in conjunction with the lobbyist's efforts to lobby the public official. *Id.*

However, there are several exceptions to this general baseline rule. *Id.* These exceptions apply to private social and educational events, public social and educational events, and informal social and

educational events held within the state of North Dakota. N.D. Admin. Code §§ 115-03-01-03, 115-03-01-01(3), (7), (9). For these in-state events, payment of travel expenses for a public official is permitted when the public official “meaningfully participates in the event as a speaker or panel participant, presenter, or ceremonial event appropriate to the position, or if attendance is appropriate to the performance of official duties.” N.D. Admin. Code § 115-03-01-03(5). The payment of travel expenses must not exceed Office of Management and Budget Fiscal Policy #505. *Id.*

Article XIV’s gift prohibition enables the Commission to make exceptions for lobbyist gifting for in-state events only. *See* N.D. Const. art. XIV, § 2(1). The Commission cannot make exceptions to Article XIV’s lobbyist gift prohibition for out-of-state events. *Id.* A different analysis applies when reviewing out-of-state events.

B. Out-of-State Events

When out-of-state events are at issue, two questions apply: (1) whether the item, service, or thing of value is a gift; and (2) if the item is a gift, whether it is “given in conjunction with an effort to lobby a public official by a lobbyist.” *Id.*; N.D. Ethics Comm’n, Advisory Op. 23-02, 5 (2023). In Advisory Opinion 23-02, the Commission analyzed an event happening outside North Dakota and focused its analysis on the second question. In determining whether the host organization was permitted to provide a gift, Advisory Opinion 23-02 said, “The linchpin of this analysis is answering the question whether an entity, organization, business, or group is ‘lobbying’ the public official.” N.D. Ethics Comm’n, Advisory Op. 23-02, 4 (2023). The Commission explained:

When determining whether out-of-state travel expenses (which may include registration fees, per diem reimbursements, hotel costs, food, and/or beverages) are prohibited gifts under Section 115-03-01-02, one needs to ask two fundamental questions: (1) is the travel expense a gift and (2) is the gift given in conjunction with an effort to lobby a public official by a lobbyist. If the answer to both of these questions is “yes” then the travel expense is a prohibited gift under Section 115-03-01-02.

To answer the first question, travel expenses are unquestionably gifts under Title 115 - it is specifically referenced as an example of a gift in Section 115-03-01-01 (2). To answer the second question, one needs to look to the definition of the terms “lobby” and “lobbyist.” The term “lobby” means:

- a. Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.
- b. Attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.

- c. Attempts to secure passage, amendment, or defeat of any administrative rule or regulation by any department, agency, or body of the state's executive branch.
- d. Attempts to otherwise influence public official action or decision.

N.D.A.C. § 115-03-01-01(4). Determining whether “lobbying” will or has occurred at an out-of-state event is most easily identifiable when it falls within the definitions outlined in subsection (a) through (c) above. However, additional guidance may better help public officials identify whether a lobbyist is attempting “to otherwise influence public official action or decision.” N.D.A.C. § 115-03-01-01(4)(d).

There is a spectrum of activities and efforts that may be considered “lobbying” as defined in subsection (d). Some out-of-state conferences and events provide objective, educational materials regarding pertinent topics - these conferences may present research-based findings, hold panel discussions with experts on topics, or provide factual updates on developing areas. The Commission compares these objective educational out-of-state conferences to continuing education, professional development, or vocational training. These types of out-of-state conferences and events are unlikely to be considered lobbying as defined in N.D.A.C. § [115-03-01-01(4)] as these are aimed at providing education only.

Other out-of-state events may present information from a particular perspective and are consequently more subjective. The individuals preparing materials, presenting materials, or engaging in discussions at an event may have an agenda that aligns with a political, social, or educational agenda. While these events present information, it is often presented through a filter than aligns to an agenda and opposing views are excluded. These types of out-of-state conferences and events may be considered lobbying as defined in N.D.A.C. § [115-03-01-01(4)]. Public officials should exercise caution and fully determine whether there are attempts, either passively or actively, to influence their action and decisions. Consequently, these types of events or conferences should be evaluated for “attempts to influence public official action or decision” on a [c]ase-by-case basis. See N.D.A.C. § 115-03-01-01(4)(d).

When reviewing these types of out-of-state events for lobbying efforts, public officials can consider the following factors:

- (1) Overarching objectives of the event sponsor(s);
- (2) Topics of presentations, panel discussions, or social occasions;
- (3) Scope and type of invitees to the event;

- (4) Materials provided to a public official before, during, and after the out-of-state event; and
- (5) Communications received by a public official before, during, and after the out-of-state event from the event sponsor or other invitees.

Yet, other out-of-state events clearly attempt to persuade or influence public official action or decision. For instance, when a public official attends an out-of-state event and is presented with scripted or suggested legislation to bring back to North Dakota, lobbying as defined in N.D.A.C. § 115-03-01-01(4)(a)-(d) can unquestionably occur.

Ultimately, it is the responsibility of the public official to determine whether there is an attempt to influence official action or decision when accepting travel expenses related to out-of-state events. Moreover, such evaluation by a public official may need to be made for separate and distinct events (such as dinners, socials, or tours) held at a conference. If a public official determines there is an attempt to influence official action, the public official has the ability to leave the event or stay and pay market value for attendance at the event in accordance with N.D.A.C. § 115-03-01-02.

In order for the gift prohibition to apply, the gift must be given by a “lobbyist.” A “lobbyist” is defined as a “person who engages in activity that falls within the definition of the term ‘lobby.’” N.D.A.C. § 115-03-01-01(5). The term lobbyist, as defined within N.D.A.C. [ch. 115-03-01], is more expansive than the definition of “lobbyist” within N.D.C.C. § 54-05.1-02 who are required to be registered with the Secretary of State. The term “lobbyist” as used in N.D.A.C. [ch. 115-03-01] excludes certain individuals from being considered lobbyists. See N.D.A.C. § 115-03-01-01(5). A “lobbyist” does not include legislators; private citizens who appear on the citizen’s own behalf; employees, board members, volunteers, or agents of the state or its political subdivisions when those individuals are acting in their official capacity. Id.

Id. at 5-7.

In Amended Advisory Opinion 25-02, the Commission clarified “travel expenses are unquestionably gifts unless given in exchange for fair market consideration.” N.D. Ethics Comm’n, Amended Advisory Op. 25-02, 8 (2025). In that opinion, the Commission determined when fair market consideration is exchanged by the public official working at an event, payment of travel expenses is not a gift. *Id.*

III. ETHICS ANALYSIS

To answer Representative Heinert’s question, the Commission must answer the following: (1) are

the complimentary credentials and lodging gifts; and (2) if they are gifts, are they given in conjunction with an effort to lobby a public official by a lobbyist.

A. Complimentary Credentials and Lodging are Gifts

The Commission must analyze the fair market consideration exception because, according to Representative Heinert, he has been asked to provide feedback in one meeting with the sponsors of the event. Representative Heinert has not been asked to provide anything else in exchange for the complimentary credentials and lodging. While Representative Heinert's input is a thing of value, the Commission determines the meeting does not equate to the fair market value of multiple days of lodging and credentials for the event. The feedback meeting described by Representative Heinert is more akin to a promotional survey in exchange for something of higher value.

Because Representative Heinert has not been asked to provide anything else in exchange for the complimentary credentials and lodging, other than his attendance, they are gifts. They are things of value not given in exchange for fair market consideration. N.D. Const. art. XIV, § 2(1). Therefore, the Commission must determine if they are given in conjunction with an effort to lobby Representative Heinert.

B. Lobbying Could Occur During Portions of the Event

The Commission must look to whether there will be "attempts to otherwise influence public official action or decision" during Representative Heinert's attendance at the SEMA Show. In general, the event appears to be an event that will "present research-based findings, hold panel discussions with experts on topics, or provide factual updates on developing areas." The show will focus on new developments in the automotive industry as a whole with educational presentations throughout. If the event only consisted of educational presentations and did not include special events for legislators, the Commission would not have concerns about lobbying. The Commission must consider the special events Representative Heinert has been asked to attend because of his status as a legislator.

In Advisory Opinion 23-02, the Commission said an "evaluation by a public official may need to be made for separate and distinct events (such as dinners, socials, or tours) held at a conference." N.D. Ethics Comm'n, Advisory Op. 23-02, 6 (2023). This analysis is necessary for the additional events of the SEMA Show because Representative Heinert has been asked to attend special events, including a meeting between legislators and "industry leaders."

These special events are a type of event "that aligns with a political, social, or educational agenda." Therefore, the Commission will look to the five factors from Advisory Opinion 23-02 to determine whether the industry leaders may engage in lobbying. The five factors are as follows: (1) overarching objectives of the event sponsor(s); (2) topics of presentations, panel discussions or social occasions; (3) scope and type of invitees to the event; (4) materials provided to a public official before, during, and after the out-of-state event; and (5) communications received by a public official before, during, and after the out-of-state event from the event sponsor or other invitees.

The invitation specifically includes two special events with legislators, the “state lawmaker reception with industry leaders” and the “SEMA Industry Awards Banquet.” Additionally, while not listed on the invitation, Representative Heinert described two additional events occurring within the SEMA Show: a meeting of legislators with SEMA’s executive board and a session where SEMA would solicit feedback from legislator attendees. However, the Commission does not have enough information to fully analyze the five factors outlined above for these special events.

“Ultimately, it is the responsibility of the public official to determine whether there is an attempt to influence official action or decision when accepting travel expenses related to out-of-state events.” *Id.* Accordingly, if Representative Heinert realizes, during any event at the SEMA Show, an individual or organization is attempting to influence an action concerning a state-level policy issue (for example, introduce, support or oppose legislation), he will have two options: (1) “leave the event” or (2) “stay and pay market value for [credentials and lodging] in accordance with N.D.A.C. § 115-03-01-02.” *Id.*

IV. CONCLUSION

The Commission answers Representative Heinert’s question as follows:

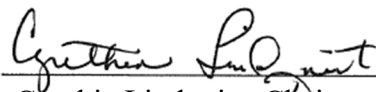
1. Yes, it is acceptable for a legislator to attend the 2025 SEMA Show with complimentary lodging and credentials provided by SEMA.
2. The Commission cautions the legislator about attending special events where lobbying could occur.

Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and court orders or opinions. Until and unless subsequent developments in the law occur, criminal and civil penalties may not be imposed upon an individual for an action taken in accordance with this advisory opinion when: (1) the individual acts in good faith; and (2) the material facts surrounding the action taken are substantially the same as the conduct presented in the opinion. N.D.C.C. § 54-66-04.2(4).

In accordance with N.D.C.C. § 54-66-04.2, the Commission will publish this advisory opinion on its website. The Commission thanks Representative Heinert for seeking advice regarding this issue.

This advisory opinion was approved by the Commission at a special meeting held on August 1, 2025.

Dated this 1st day of August, 2025.


Cynthia Lindquist, Chair
North Dakota Ethics Commission